#### LEGAL INTELLIGENCE.

Civil Rights in Maryland. COMPRTENCY OF COLORED WITNESSES-CONFLICT BLTWEEN FEDERAL AND STATE LAWS-UNITED STATES LAWS PARAMOUNT-CIVIL RIGHTS BILL

A very important declision has recently been rendered by Judge Bowie, thier Justice of the Court of Appeals of Maryland, bearing upon the application of the Civil Hights bill to the laws of this State. The facts of the case, as we are informed by a correspondent, as e that Dr. A. M. Somers, of Rockville, Montgomery county, on the 22d of June, committed an unprovoked assault upon a poor, unoffending, and peaceable colored man in the streets of Rockville, bearing him very severely.

beating him very severely.

This colored man's wife, on the day following the assaut, sued out a warraut before B. Monday, Esq., a justice of the peace in Rockynie, against Somers, a justice of the peace in Receville, against Somers, on which he was arrosted and arraigned before the magistrate. George Peter, Esq., a prominent Democratic awyer, was employed by Dr. Somers as his counsel, and argued that the warrant was illegal under the laws of Mary and, no negro or mulatto, Mr. Peter contending, being a competent witness against a white person. Justice Monday decided that that law had been abrogated and superseded, and was null and void, under the law recently passed by Congress known as the Civil Rizats bdi.

In accordance with this decision, the Justice re-

In accordance with this decision the Justice re-quired Mr. Someis to give ball in the sum of \$800 for his appearance before the Circuit Court of Montgomery county Somers rolused to turnish ball, and Justice Monday committed him to jail, whereup on his counsel, Mr. Peter, at pired to Chief Justice Bowie the being at home at the time) for the writ of habeas corpus, which his Honor refused to grant, giving a written opinion sustaining the action of Justice Monday, and maintaining the constitutionality of the Civil Rights hill, so far as intrinounlity of the Civil Rights hill, so far as scitntionality of the Civil Rights bill, so far as it relates to the question in dispute.

As the opinion of Chief Justice Bowie is of much

in portance to all persons in the State, we give at in full below, as follows:-

A. H. Somers, Mintgomery county, Md., 2d July, 1898. 
Petition for Habe as C reas:—

The return shows the petitioner is detained upon a warrant issued by a justice of the peace upon information of a negro charging the prisoner with an assuit with intent to kill the prisoner claims his discharge upon the ground that the warrant was issued without authority of law the informer being incompetent to testify in any matters in which a waite person sconcerned.

ceris.d.

The code enacts, "no negro or mulatto, whether tree or slave, and no indian, shall be admitted in any matter detending in any court or before any justice of the peace, where any white person is concerned."

This is rubstantially the provision of the act of 1717, ch. 13, which is prefaced with a preamble, declaring it might be of dangerous consequences to admit a datow as evidences in law in any courts of record, obefore any magistrate, any negro or mulatto, slave or irree, or any ludian, slave or free, native of this or the neighboring provinces.

teli hborths provinces

\*\*Examinate and constitution between the white and egro races were punished by the same act under evere penalties, subjecting the offenders to slavery for

The constitutional power of the State to pass such laws however their wisdom or policy may have been doubted, has never been questioned. This legislation commenced with the colony, has been continued since it became a state, and is, as we have scon, incorpora ed in the body of the ode of Puelle General Laws. Such was the policy of the State for nearly two hundreds.

such was the policy of the State for nearly two handres years.

The Convention of 1884 by the twenty-fourth article of the Declaration of Rights, declared 'that hereafter in this state there shall be neither slavery nor lavoumtary servitude, except in punishment of crime, where of the party shall have been duly convicted; and all persons held to service or labor, as slaves ale hereby declared tree." A new policy was thus inaugurated, the General Assembly of 18.5, in pursuance of the principles caunciated in the Declaration of Rights, repealed act 66, of the code of Public General Laws, entitled "Negroes" under which were codified the laws re ating to 'slaves," "manumission," "immigration," "vagrancies," "numultuous assemblages." "inc indiary publications," "navigation of vesses a by negroes," "icenses to keep dog or gun," dealings with ree negroes," "contracts of hire by free "negroes," and petitions for resdom," thereby repealing the disability previously existing, and placing negrors and mulattoes under the same laws with white persons in those particulars.

On he 3d of february, 1866, the General Assembly of Maryland ratified and cinfirmed the thirteenth article of the constitution of the United States, which is in these words:

"Letton i Nether's avery nor involuntary servitude.

these words:
".ectoo i Ne'ther s'avery nor involuntary servitude,
except as a punishment for crime, whereor the
party shall have been duly convicted, shall exist
within the United States or any place subject to their

iurisoletion. Section 2. Congress shall have power to entorce this artice by appropriate legis atton."

Fror to the adoption of this amendment to the Fedstral Constitution Congress as its anguage implies) had 10 power to legislate on the subject of slavery in

the States.

The question now occurs, what is the character and extent or the power conterred? Does it give exclusive or concurrent jurisdiction to Congress over the co-ored population? or express or implied authority to cass the act cutit of "An act to protec, a lipersous in the United States in the religious," and ruraish the means of their windies ion," their vindice lon."
The fits branch of the amendment is identical in lan-

The firs branch of the amendment is identical in language and sense with the ordenance of 1757, and the 24 n act of the lectaration of Rights of this state.

The second section is a modification of the 18th paragraph of section 5 of article 1 of the Federal Constrution, Living Congress "power to make all laws which shall be necessary unint proper of the oregoing powers." which super-addition an eminent commentator has said, was only declaratory of a truth which would have resulted by necessity and necessary implication.

the constitutional nower of Congress would have the constitutional bower of Congress would have been the same, "without thom, as the power to do a thing metuded all necessary and proper means. The word "people" qualifying the specific grant of the enumera ed powers, in the section above cited, is said to be at once admonitory and directory. "It requires that the means should see being lide appropriated to the eng." (2 story on the Cous. 253)

that the means should we be not Add appropriated to the end "(2 story on the Cous. 253)

The Constitution being the paramount law of the land, all laws to the contrary previously existing, or which might thereatier be passed, would be not and solved By its own force upon the adoption of the 13th article (by three-out inso the States in the Union) the institution of slavery was extinguished, annulied, and abolisted. Hence the 2d section of the 13th article is not to be construed as meaning that Congress shall do what the Constitution itself had already done, but might use other means benow that to Congress shall do what the Constitution itself had already done, but might use other means benow the last act of the Constitution negatively conferred on Congress the power of prohibiting the save trade after the vear 1888. Immediately thereafter this power was exercised by the enactment of severe penal laws making it ultimately piracy, punishable with death.

Acts of Congress may be constitutional and unconstitutional, valid in part and vold in part.

Neither the question of citizenship, suffrage nor right to office is involved in the question before us. Confect the part and vold in part.

Neither the question of citizenship, suffrage nor right to office is involved in the question before us. Confect should be persons capable of understanding the obligation of an early and believing in a future state of rewards and punishments are, at common law, competent as witnesses, without regard to citize ship, domicil, or color. Nor are the reserved rights of the State or the people necessarily involved; the construction of an express strant of power in Congress to remove the incapacity of the power in Congress to remove the incapacity of the good of the construction of an express arms to power to the angulare of the amendment is plain and emphatic:—'Congress shall have power to engineer under this article by appropriate legislation.' The construction of the definition of the

emphatic:—'Congress shall have power to enforce this atticle by appropriate legislation."

The construction given to the words' necessary and proper" used in the stil section of the 1st at nois of the Constitution is familiar to those acquainted with the judicial history of the country. They were held to include not only those means without which the grant would be nugators, but to extend to those which were "needual," useful, "conductive to the end, "Washingtor, Harmiton, Marshal ) Congress and the judicially generally adoped this view, and although in aller times the institution (the lank or the United States) which was counted on this theory was aban doned, the interpretation lised remains as a part of the constitutional law of the country.

This construction of the Constitution seems to have been adopted by the framers of the amendment they have not used the word 'necessary "but substituted "appropriate" the synon mo "proper." The dictionaries define "appropriate" as meaning "fit" "adapted" 'suitable, "proper." (# bs.-r and # r ces er.) When we recal the learnes and protrac ed concroversy as to the drue construction of the word 'necessary' in the original Constitution and the different policies and parties based on its interpretation, its omission in the present amendment is significant of the intention of its interpretation, its omission in the present amendment is significant of the intention. It is iramers to uce er a power une seried but that construction in whe present amendment is significant of the intention. It is iramers to uce er a power une seried but that construction is well as the proper. that .com: to mean no: merely indispensable legislation but such as was suitable to the end in view.

but such as was suitable to the end in view.

Since the adoption of the amendment or in anticipation of it, many of the la c staveholding States have by occal eguspion, removed the incapacity of negroes as witnesses either to a ly or parliany. I am creately informed that Mahama, South 'are ina, Florida, Mississippi, North 'are ina, Georgia, and West Virginia, have made them competen. In all cases in which their rights of person or woperty are concerned. The action of these States is the strongest evidence of the 'appropriate' character of such legislation. Competency as a witness though not in one sense necessary to free-Com, is suitable and proper to its enjoyment. It is not possible for a man to be arece ascent unices that capacify is imparted to him. At him no long are restrained, his actions confined unless a certain consciousness of salety arising from his ability to appeal to the law for protection from violence and wrong at ends him. He is seen at the passes around him. So leave that suffers from such acas of exists they become the ready instruments of mischief in the hands of the violence and malticipats.

Congress having a concurrent power whenever! os-

congress having a concurrent power whenever it exercises such power the States cannot enter upon the same ground and provide in the same objects. Two distinct will cannot at the same time we exercised in relation to the same subject effectually, and at the same time be compatible with each other if Kent Com's. Sec. 15, p. 426.)

In here there is a conflict between rights under the law of a local General min and a law of General min of the law of a local General min and a law of General min (Here) we see that which is sufreme and parameters (Here) with Sare 3 of 11 29. I have conflict myself in the consideration of the act of Congress above referred to, to the single question of the act of Congress above referred to, to the single question of the act of Congress above referred to, to the single question of the act of Congress above referred to, to the single question of the act of Congress above referred to, to the single question of the act of constitutionality upon other points, yet it is not clear y unconstitutionality upon other points, yet it is not clear y unconstitutional in the partica lar in question. I am hound by the usages and decisions of the highest courts to resume that Congress has not Folated its constitutional colligations.

Judicial subordination, public order and domestic tranquility require that this principle should be scrapulously chserved. Constitutions are not of every man's private interpretation.

The presumption must always be in favor of the validity of law, if the contrary is not c early demonstrated. It must be a clear and unequivecal breach of the Constitution, not a doubtful and argumentative implication. Not being able to perceive clearly and unequivecally a breach of the Federal Constitution in the act of Congress entitled "An act to protect all persons in their civil rights," etc., in making negroes competent to testify, without expressing any opinion on other sections of the law, i must overrule the motion to quals the warrant, and remaind the prisoner to the custody of the afficer.

Chief Justice of the Court of Appeals of Maryland.

Baltimore Sun.

Important to National Banks.

As there seems to be some misapprehension among National Banks concerning the proper method of making their returns, the following letter from the Treasurer of the United States may be of great interest:-

TREASURY OF THE UNITED STATES, DIVISION OF NATIONAL BANES, WASHINGTON, July 7, 1866.—Sir:—I have received yours of the 31 instant. You say "there is a difference of opinion in regard to one feature of our statements among National Banks in this section, which does not seem to be met by any of your published decisions. It is connected with the 'deposit' item. We make the smount by adding the amount due ordinary deposits to that received from collections on count of other banks, and deduct the amount of overdraits and that cent to and due from other banks (on which, of course. they pay the tax). In other words, we deduct the amount due from other banks from that due to them, and add this to the balance of deposit account (deposit less overdrafts").

That there has been no published decision of this office in regard to the above manner of making returns, is simply owing to the fact that it has not hitherto been supposed that any bank would claim to be allowed to deduct from its deposits the amount of its overdrafts or the sums due from other banks, virtually overdrafts. The deposits shown by the books of your bank are the deposits to be returned for payment of duty, without any deduction, whether of amounts due from other banks or of individual overdrafts, which are really loans illegitimately and im-properly made, opposed to all principles of good banking, and against which there should be the most strict regulations.

The \$20,000 mentioned by you as received from the Metropolitan Bank as a "call loan," and credited to said bank, is a depositsupon which duty should be paid, even though the amount has been left by you with the same bank subject to your drait. The deduction as an offset of a like amount due from said bank would

not be proper. The check received by you from the Albany Bank, and forwarded to the Saugerties Bank for collection, having been credited by you to the Albany Bank, must be returned by you as a deposit, so long as it may remain with you, and it would not be proper to enter as an offset to this deposit the amount you have charged to the augerties Bank on account of said collection.

Very respectfully, F. E. Spinner, Treasurer, H. H. Reynolds, Cashier State N. Y. National Bank, Kingston, N. Y.

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and a lot of Ogerau's celebrated French Calfikins,
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May be examined during Tuesday and Wednesday, and
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5th The mind is relieved from much painful acklety.

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